

Department of Legislative Services
Maryland General Assembly
2010 Session

FISCAL AND POLICY NOTE
Revised

House Bill 756
Judiciary

(Delegate Levi, *et al.*)

Judicial Proceedings

Maryland Gang Prosecution Act of 2010

This bill makes several changes to the criminal gang statute, including (1) adding several offenses to the list of underlying crimes that serve to prove criminal gang activity; (2) requiring a sentence for a second or subsequent offense of criminal gang participation or a violation resulting in the death of a victim to run consecutively to any sentence for an underlying crime on which the conviction was based; and (3) adding a prohibition against being a gang kingpin.

Fiscal Summary

State Effect: Potential minimal increase in general fund expenditures due to the bill's expansion of underlying crimes that are subject to criminal gang membership, creation of a gang kingpin offense, and the requirement that sentences for criminal gang participation run consecutively to sentences for underlying crimes under specified circumstances.

Local Effect: Potential minimal increase in local revenues due to monetary penalties for gang kingpin violations and an increase in the number of circuit court defendants who qualify for criminal gang participation monetary penalties as a result of the bill's expansion of the list of underlying crimes.

Small Business Effect: None.

Analysis

Bill Summary: The bill removes "ongoing" from the definition of criminal gang and the language prohibiting participation in criminal gang activity and modifies the statutorily enumerated common traits of criminal gangs by repealing "an identifying sign, symbol,

name, leader, or purpose” and substituting “an overt or covert organizational or command structure.”

The bill adds several offenses to the list of underlying crimes for gang membership, including (1) misdemeanor second-degree assault; (2) wearing, carrying, or transporting a handgun; (3) misdemeanor inducing false testimony or avoidance of a subpoena; (4) misdemeanor retaliation for testimony; (5) misdemeanor intimidation or corruption of a juror; (6) human trafficking; (7) receiving the earnings of a prostitute; and (8) operation of a brothel.

The bill also requires a sentence for a second or subsequent offense of criminal gang participation or a violation resulting in the death of a victim to run consecutively to any sentence for an underlying crime on which the conviction was based.

Under the gang kingpin offense created by the bill, a person is prohibited from organizing, supervising, financing, or managing a criminal gang. A violator is guilty of a felony and subject to maximum penalties of imprisonment for 20 years and/or a \$100,000 fine. A sentence must run consecutively to a sentence for any crime based on the act establishing a violation.

The bill clarifies that nothing in the criminal gangs subtitle may be construed inconsistently with the provisions relating to jurisdiction over juvenile causes contained in Title 3, Subtitle 8A of the Courts Article.

Current Law: “Criminal gang” is defined as a group or ongoing association of three or more persons whose members:

- individually or collectively engage in a pattern of criminal gang activity;
- have as one of their primary objectives or activities the commission of one or more underlying crimes; and
- have in common an identifying sign, symbol, name, leader, or purpose.

An underlying crime includes all “crimes of violence” as defined in State law and felony violations of specified crimes.

A person is prohibited from (1) participating in a criminal gang knowing that the members of the gang engage in an ongoing pattern of criminal gang activity; and (2) knowingly or willfully directing or participating in the commission of an underlying crime (or act by a juvenile that would be an underlying crime if committed by an adult) committed for the benefit of, at the direction of, or in association with a criminal gang. A violator is guilty of a felony and subject to maximum penalties of 10 years imprisonment or 20 years if death to a victim occurs, and/or a \$100,000 fine. A sentence

imposed under this provision may run consecutive to or concurrently with a sentence for any underlying crime that was used to establish participation in criminal gang activity. A person may be charged with a violation of this section only by indictment, criminal information, or petition alleging a delinquent act.

A violation of any of the following (defined as a “crime of violence” under the Criminal Law Article and for which mandatory sentences apply) is an “underlying crime” for purposes of the prohibition against gang activity:

- abduction;
- first degree arson;
- kidnapping;
- manslaughter, except involuntary manslaughter;
- mayhem;
- maiming;
- murder;
- rape;
- robbery;
- robbery with a dangerous weapon;
- carjacking and armed carjacking;
- first or second degree sexual offense;
- use of a handgun in the commission of a felony or other crime of violence;
- first degree child abuse;
- sexual abuse of a minor (under specified circumstances);
- an attempt to commit any of the above crimes;
- continuing course of conduct involving rape or sexual offense with a child;
- assault in the first degree, or assault with intent to murder, rape, rob, or commit a first or second degree sexual offense.

A felony violation of the following crimes is also an underlying crime:

- second degree assault;
- extortion;
- manufacturing or possessing a destructive device;
- manufacturing, distributing, possessing with intent to distribute, or dispensing a controlled dangerous substance;

- second degree arson;
- attempting to burn a structure or property;
- burglary in the first, second, or third degree;
- general theft or unauthorized taking of a motor vehicle;
- obstruction of justice;
- retaliation for testimony or intimidating or corrupting a juror; or
- illegal possession of a firearm.

“Pattern of criminal gang activity” is defined as the commission of, attempted commission of, conspiracy to commit, or solicitation of two or more underlying crimes or acts by a juvenile that would be an underlying crime if committed by an adult, provided the crimes or acts were not part of the same incident.

The Attorney General, at the request of the State’s Attorney for a county in which a violation or an act establishing a violation of the prohibition against gang activity occurs, may aid in the investigation of the violation or act and prosecute the violation or act.

Background: The proliferation of gangs and their migration from urban communities to suburban and rural locations, which began more than two decades ago, is a significant problem in most areas of the country, including Maryland. It is estimated that there are over 600 active gangs in the State with over 11,000 members. The most prominent gangs in the State include the Bloods, Crips, MS-13, Black Guerilla Family, and Dead Man Incorporated.

In addition to traditional street gang activity, the Department of Public Safety and Correctional Services (DPSCS) designates gangs within correctional facilities as Security Threat Groups (STG). DPSCS uses a validation worksheet point system in which an individual is assessed points based on having or displaying gang paraphernalia, tattoos, signs, colors, or symbols; a previous identification as a gang member or association with known gang members; being named by another individual as being a gang member; or an admission of gang membership from the inmate. An inmate who receives 2 to 9 points is considered an “associate” of a gang, and an inmate with 10 or more points is considered a validated member. As of October 2009, DPSCS has identified approximately 3,400 STG members and 500 associates who participate in over 260 different gangs.

As required by the Maryland Gang Prosecution Act of 2007 (Chapter 496), the Attorney General and the Maryland State’s Attorneys’ Association submitted a report on January 1, 2008, to the General Assembly on their recommendations for additional legislation to assist in the prosecution of gang activity.

Although several of the proposals included in the report were introduced in the 2008 and 2009 sessions, none has been enacted. These proposals, which are expected to again be introduced in the 2010 session, include:

- eliminating the requirement that to be defined as a gang, there must be an “ongoing” association of three or more people. Prosecutors contend that this definition leaves open for argument that the alleged gang must be “ongoing” even at the time of arrest or trial;
- expanding the list of underlying crimes that are required to be proven to include various misdemeanor crimes that are often associated with gang activity, such as malicious destruction of property (*i.e.*, creating graffiti), second degree assault, receiving earnings of a prostitute, and wagering. Maryland gang law currently restricts the underlying crime to crimes of violence and felony violations of certain laws;
- expanding the list of factors that may be used by law enforcement statewide to uniformly authenticate and validate gang membership. The current statute requires a showing that the members of an alleged gang “have in common an identifying sign, symbol, name, leader, or purpose.” Prosecutors contend that identifiers such as symbols and flags, style or color of dress, tattoos, claims of territory, or self-proclamation are also frequently used by local law enforcement agencies to document and validate gang membership; and
- requiring that, where imposed, the gang offense must be served consecutively to the sentence for the underlying crime. Prosecutors argue that the impact of the Gang Prosecution Act is substantially diminished because, as currently written, a court may order a sentence for a gang violation to run concurrently with the sentence for the underlying crime.

According to the Maryland Sentencing Guidelines Database, in fiscal 2009, there was one conviction in the State’s circuit courts for participation as a member of a criminal gang in the commission of a crime resulting in the death of a victim. There were four convictions for gang participation in the commission of a crime that did not result in the death of a victim.

State Expenditures: General fund expenditures increase minimally as a result of the bill’s incarceration penalties due to more people being committed to Division of Correction (DOC) facilities for longer periods of time.

Persons serving a sentence longer than 18 months are incarcerated in DOC facilities. Currently, the average total cost per inmate, including overhead, is estimated at \$2,750 per month. This bill alone, however, should not create the need for additional beds, personnel, or facilities. Excluding overhead, the average cost of housing a new DOC inmate (including variable medical care and variable operating costs) is \$409 per month. Excluding all medical care, the average variable costs total \$182 per month.

The Office of the Public Defender (OPD) advises that if the bill generates 200 additional cases, OPD will need to hire one assistant public defender, at an estimated cost of \$71,000 in fiscal 2011, which accounts for the bill's effective date. Legislative Services advises that although the workload of the Judiciary, OPD, and the Attorney General's Office may increase to the extent that additional individuals are prosecuted under the bill's expansion of prohibitions against gang activity, given the infrequent use of the current statute, it is likely that any increase in the workload can be handled with existing budgeted resources.

Local Revenues: Revenues increase minimally due to monetary penalties imposed in gang kingpin cases and an increase in the number of circuit court defendants receiving monetary penalties for criminal gang participation as a result of the bill's expansion of the list of underlying crimes.

Additional Information

Prior Introductions: None.

Cross File: SB 517 (Senators Stone and Jacobs) - Judicial Proceedings. However, the bills are not identical.

Information Source(s): Baltimore City; Allegany, Montgomery, and Talbot counties; Department of Public Safety and Correctional Services; Commission on Criminal Sentencing Policy; State's Attorneys' Association; Office of the Public Defender; Department of Legislative Services

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